IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

Crl.MC.No. 1619 of 2006()

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ST.576/2005 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER: ACCUSED

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E.JAYARAJ, JAYARAJ NIVAS,
538/31/C, CHERUVANNOOR,
P.O.KOZHIKODE, KOZHIKODE DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS: COMPLAINANT

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1. P.SOMASEKHARAN NAIR,
S/O.PARAMESWARAN NAIR, MANAGER,
M/S.KERALA CHIT FUNDS, PAN AFRICAN PLAZA,
PULIMOODU, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.R.RAMADAS
R2 BY PUBLIC PROSECUTOR SMT. LATHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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Crl.M.C.No. 1619 of 2006

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Dated this the 19th day of January, 2007

**O R D E R**

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The prosecution has been initiated by the respondent/complainant. The complainant alleges that there was an independent transaction between him and the petitioner herein and that the cheque for Rs. 3 Lakhs was issued by him for the discharge of such liability.

2. The petitioner has already entered appearance before the learned Magistrate. He wants to raise a contention that the cheque was not issued for the discharge of any legally enforceable debt/liability, but was issued as a blank signed cheque as security when his friend Manojkumar entered into a transaction with M/s. Kerala Chitty Fund. The said Manojkumarm had filed a complaint against the said Chitty Company under Section 138 of the N.I. Act as he had not received the amount in that transaction and had produced a photostat copy of the blank signed cheque, the original of which Manojkumar had allegedly handed over to Kerala Chitty Fund as security.

3. The question whether the cheque was handed over as a blank signed cheque by Manojkumar to Kerala Chitty Fund or whether it was issued by the petitioner for the due discharge of any legally enforceable debt/liability to the complainant herein cannot obviously be attempted to be resolved in this proceedings under Section 482 Cr.P.C. with the meager probative indications available. That question will have to be decided in the course of trial on the basis of the evidence to be adduced by the rival contestants before the learned Magistrate. It would be presumptuous for this Court to hazard any authentic opinion on the disputed questions of facts with the materials presently available. I shall carefully refrain from making any opinion, lest it may prejudice the interests of either contestants.

4. This Crl.M.C. is accordingly dismissed. But I may hasten to observe that the dismissal of this petition will not fetter the rights of the petitioner to raise all appropriate and relevant contentions and substantiate the same before the learned Magistrate and attempt to claim acquittal on the basis of such contentions.

**(R. BASANT)**
Judge

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